

APPEAL NO. 031269
FILED JULY 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 9, 2003. The hearing officer resolved the disputed issue by deciding that the appellant's (claimant) impairment rating (IR) is 5% in accordance with the report of the required medical examination (RME) doctor. The claimant appealed this determination, contending that the hearing officer erred in finding that the great weight of the medical evidence is contrary to the 15% IR assigned by the designated doctor chosen by the Texas Workers' Compensation Commission (Commission). The respondent (carrier) responded, requesting affirmance.

DECISION

Affirmed.

The issue in this case concerned the claimant's IR. It is undisputed that the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides 4th ed.) applies to this case. The designated doctor assigned the claimant a 15% IR using Diagnosis-Related Estimate (DRE) cervicothoracic category III. The RME doctor assigned the claimant a 5% IR using DRE cervicothoracic category II. The hearing officer found that the great weight of the other medical evidence overcame the presumptive weight to be accorded the report of the designated doctor and determined that the claimant's IR is 5%. The question on appeal is whether the claimant has significant signs of radiculopathy so as to be assigned impairment under DRE cervicothoracic category III.

The claimant appeals the hearing officer's decision, contending that the hearing officer ignored or misinterpreted the EMG findings because those findings show that the claimant has radiculopathy, that the RME doctor did not have the EMG report, that neuropathy is radiculopathy, and that the hearing officer erred in not adopting the designated doctor's report of a 15% IR under DRE cervicothoracic category III.

Section 408.125(e) provides that for a claim for workers' compensation benefits based on a compensable injury that occurs before June 17, 2001, if the designated doctor is chosen by the Commission, the report of the designated doctor shall have presumptive weight, and the Commission shall base the IR on that report unless the great weight of the other medical evidence is to the contrary, and that if the great weight of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Commission, the Commission shall adopt the IR of one of the other doctors.

The claimant had an EMG and nerve conduction study performed on her bilateral upper extremities and the electrodiagnostic tests were interpreted by the examiner as showing evidence of moderate neuropathy of the median nerves at the wrists, with no other abnormality noted. Another nerve conduction study of the claimant's bilateral upper extremities was interpreted by the examiner as being indicative of a left ulnar neuropathy. Dorland's Illustrated Medical Dictionary, 28th Edition, defines neuropathy as a functional disturbance or pathological change in the peripheral nervous system, whereas radiculopathy is defined as a disease of the nerve roots. None of the electrodiagnostic test reports in evidence note that the claimant has radiculopathy.

The following information is found on page 104 of Chapter 3 of the AMA Guides 4th ed.:

DRE Cervicothoracic Category III: Radiculopathy

Description and Verification: The patient has significant signs of radiculopathy, such as (1) loss of relevant reflexes or (2) unilateral atrophy with greater than a 2-cm decrease in circumference compared with the unaffected side, measured at the same distance above or below the elbow. The neurologic impairment may be verified by electrodiagnostic or other criteria (differentiators 2, 3, and 4, Table 71, p. 109).

The RME doctor reported that a cervical MRI noted the possibility of a herniation at C6-7, that there were no clinical findings of radiculopathy, that the EMG/nerve conduction study showed no evidence of a radiculopathy, and that the claimant has nonverifiable radicular complaints. The RME doctor placed the claimant in DRE cervicothoracic category II, for minor impairment. There is no mention in the RME doctor's report of any findings of loss of reflexes of the upper extremities or of atrophy of the upper extremities.

The designated doctor noted that the claimant complained of symptoms in her neck and left upper extremity, that the claimant has restricted cervical range of motion of her neck with tenderness over the spine, that the claimant's upper extremities reflexes were graded at + 2 and were brisk, that the claimant has decreased sensation over the C6 nerve root, that manual motor testing of the upper extremities revealed decreased strength on the left side compared to the right side, and that vibratory sensation was intact in the upper extremities. There is no mention of atrophy or loss of reflexes of the upper extremities in the designated doctor's report. The designated doctor noted the findings of a cervical MRI, which included, among other things, a C6-7 herniation with probable involvement of the left nerve root. The designated doctor wrote that he placed the claimant in DRE cervicothoracic category III because evidence of radiculopathy is present.

The Appeals Panel has held that a hearing officer who rejects a designated doctor's report as being against the great weight of the medical evidence must clearly detail the evidence relevant to his or her consideration and clearly state why the other

evidence is to the contrary. Texas Workers' Compensation Commission Appeal No. 950317, decided April 13, 1995.

The hearing officer made numerous findings of fact, including findings related to Table 71, DRE Impairment Category Differentiators 2, 3, and 4, which are the differentiators mentioned on page 104 under DRE cervicothoracic category III, and determined that the medical evidence did not show that the claimant has verifiable radiculopathy complaints or objective evidence of radiculopathy. The hearing officer concluded that the great weight of the other medical evidence overcame the presumptive weight to be accorded to the report of the designated doctor, and that the claimant has a 5% IR.

The Appeals Panel has previously addressed the question of radiculopathy under DRE cervicothoracic category III in Texas Workers' Compensation Commission Appeal No. 030091-s, decided March 5, 2003. In that case, the Appeals Panel noted:

However, the AMA Guides indicated that to find radiculopathy, doctors must look to see if there is a loss of relevant reflexes or unilateral atrophy with greater than a two centimeter decrease in circumference compared with the unaffected side, measured the same distance above or below the elbow. The AMA Guides state that such findings of neurologic impairment may then be *verified* by electrodiagnostic studies.

We find that the hearing officer clearly detailed the evidence relevant to her consideration on whether to afford the designated doctor's report presumptive weight and clearly stated why the other evidence is to the contrary. We conclude that the hearing officer's decision is supported by sufficient evidence and that it is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Edward Vilano
Appeals Judge